

**UNITED STATES DISTRICT COURT
DISTRICT OF COLUMBIA**

LANDMARK LEGAL FOUNDATION
19415 Deerfield Ave, Ste 312
Leesburg, VA 20176

Plaintiff,

vs.

ENVIRONMENTAL PROTECTION AGENCY
1301 Constitution Ave, NW
Washington, DC 20004

Defendant.

Case No. 112-1276 (RCL)

PLAINTIFF'S PROPOSED PRODUCTION AND BRIEFING SCHEDULE

Plaintiff Landmark Legal Foundation (“Landmark” of “Plaintiff”), through the undersigned counsel respectfully, requests that the Court order the following production and briefing schedule setting forth operative dates for the present litigation. Plaintiff has conferred with Defendant's counsel, but has been unable to reach an agreement on the sole issue as to whether EPA will assure Plaintiff that it will include secret alias email accounts, including one used by former Administrator Lisa Jackson using the moniker "Richard Windsor."

Plaintiff submitted a Freedom of Information Act (“FOIA”) request to the EPA on August 17, 2012. Complaint, Paragraph 10. Landmark seeks records relating to communications EPA officials had with outside third parties pertaining to proposed regulations not yet finalized. Complaint, Paragraph 10. Plaintiff agreed to limit the scope of its request to the responsive records of senior officials in EPA headquarters.

Plaintiff filed the Complaint on October 22, 2012, asserting claims under the FOIA. On November 30, 2012, Defendant filed its Answer. Plaintiff sought expedited processing of its requests and filed a Motion for Preliminary Injunction on December 12, 2012. Defendant filed its Opposition on December 19, 2012 and the Court denied Plaintiff's Motion on December 20, 2012.

EPA informed Landmark and the Court that it would complete its response to Landmark's FOIA request on or before January 31, 2013. On January 18, 2013, Landmark initiated an effort by the parties to confer for the purpose of submitting to the Court a joint production and briefing schedule. The parties were able to agree to the response and production dates set forth herein, which include an extension until February 6, 2013 for the production of non-exempt records.

However, the parties have not been able reach full agreement in that EPA has refused and continues to refuse Plaintiff's repeated request for the specific assurance that EPA's search for responsive records will include secret alias email accounts used by EPA officials subject to Landmark's FOIA request. In particular, Landmark has sought EPA's assurance that it will include in its search an account used by former Administrator Lisa Jackson under the name of "Richard Windsor." At of the close of business on Friday, February 1, 2013, EPA reiterated its refusal to provide with the specific assurance that these accounts will be searched.

Accordingly, Landmark seeks the Court's assistance and requests it's order setting forth the following schedule:

1. Defendant will process and complete its response to Landmark's FOIA Request (HQ FOI-01861-12) on or before February 6, 2013.
2. All responsive, non-exempt records will be produced on or before February 6, 2013.

3. A list of withheld documents will be produced along with the documents. The list shall included: (1) a list of all documents withheld in their entirety with a detailed explanation of the applicable exemptions justifying why the entire document was withheld; and (2) with respect to partial withholdings, the applicable exemption with respect to partial withholdings, the applicable exemption placed on or next to the actual redaction on the redacted document itself.
4. EPA will undertake a search that is reasonably calculated to uncover all relevant records. EPA shall search all email accounts used by any officials subject to Plaintiff's FOIA request, including secret alias email accounts used by EPA personnel in their official capacity, including, but not limited to, emails sent to and received from the email account of "Richard Windsor." EPA will also require all officials subject to Landmark's FOIA request to produce records contained in private email accounts or on private computers or other storage devices.
5. After final production, within twenty (20) days, Plaintiff and Defendant will meet and confer by telephone or otherwise to determine whether a sample Vaughn index would be appropriate in this matter.
6. If the parties cannot agree on the withholdings, Defendant will file any dispositive motion on or before March 30, 2013. Plaintiff will file its response within twenty (20) days of service of Defendant's dispositive motion. Defendant will file its reply within twenty(20) of service of Plaintiff's response.

If necessary, Landmark requests that the Court schedule a conference at its earliest convenience to resolve this matter.

WHEREFORE, the Plaintiff respectfully request that the Court enter an order setting forth the above Production and Briefing Schedule as follows:

1. EPA will undertake a search that is reasonably calculated to uncover all relevant records. EPA shall search all email accounts used by any officials subject to Plaintiff's FOIA request, including secret alias email accounts used by EPA personnel in their official capacity, including, but not limited to, emails sent to and received from the email account of "Richard Windsor."
2. Defendant shall file any dispositive motion concerning the claims relating to Landmark's FOIA request identified as HQ-FOI-01861-12 on or before March 30, 2013. Plaintiff will file its response within twenty (20) days of service of Defendant's dispositive motion. Defendant will file its reply within twenty(20) of service of Plaintiff's response; and
3. Plaintiff and Defendant shall adhere to the proposed schedule as provided in Paragraph 1- 5 above.

Dated: February 1, 2013.

Respectfully submitted

/s/ Richard P. Hutchison

Richard P. Hutchison (MO Bar # 34865)

(Admitted Pro Hac Vice)

Michael J. O'Neill (DC Bar # 478669)

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Counsel for Plaintiff

CERTIFICATE OF SERVICE

Undersigned counsel hereby certifies that a true and accurate copy of the foregoing Memorandum of Points and Authorities In Support of Plaintiff's Preliminary Injunction was filed electronically with the Court by using the CM/ECF system on this 1st day of February, 2013. Parties that are registered CM/ECF users will be served by the District Court's CM/ECF system.

/s/ Richard P. Hutchison
Richard P. Hutchison
Attorney for Plaintiff

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PROPOSED PRODUCTION AND BRIEFING SCHEDULE ORDER

Upon consideration of Plaintiff's Proposed Production and Briefing Schedule, Defendant's response thereto, and the record herein, it is hereby ordered that:

1. EPA will undertake a search that is reasonably calculated to uncover all relevant records. EPA shall search all email accounts used by any officials subject to Plaintiff's FOIA request, including secret alias email accounts used by EPA personnel in their official capacity, including, but not limited to, emails sent to and received from the email account of "Richard Windsor."
2. Defendant shall file any dispositive motion concerning the claims relating to Landmark's FOIA request identified as HQ-FOI-01861-12 on or before March 30, 2013; and

3. Plaintiff and Defendant shall adhere to the proposed schedule as provided in Paragraph 1- 6 of Plaintiff's Proposed Production and Briefing Schedule.

DATED: _____

By: _____
Royce C. Lamberth, Chief Judge